

Serial No.: 09/746,872

combine the disclosures of the Krzysik, Klofta and Beerse patents, the Examiner believes the Krzysik patent discloses the use of lotion on a topsheet. The Examiner also believes the Klofta patent discloses a lotion that is to mitigate the potential for skin irritation. Further, the Examiner believes the Krzysik patent discloses improving skin health. Therefore, the Examiner believes one of ordinary skill in the art would have been motivated to combine the disclosures of the Krzysik and Klofta patents. The Examiner was not persuaded by Applicants' arguments that it would be undesirable to use an antibacterial composition on the bodyside liner (a.k.a. topsheet) of a diaper. The Examiner indicated that a subclass of art has been devoted to the use of antibacterial material on topsheets or in contact with a user's skin in diapers or other absorbent articles.

In addition to reiterating the arguments made in the Amendment submitted on July 2, 2002, Applicants offer the following additional remarks in response to the Examiner's final rejection of claims 1-7, 10-34, 37-41, 43, 45-47 and 49-57. Applicants continue to believe that there is no suggestion or motivation to combine the particular bits and pieces selected by the Examiner from the Klofta and Beerse patents with the disclosure of the Krzysik patent. The motivation to modify the Krzysik patent must flow from some teaching in the Klofta and Beerse patents that suggests the desirability or incentive to make the modification needed to arrive at the invention claimed in the present application. Further, the requisite motivation must come from the Klofta and Beerse patents, not Applicants' specification. Using Applicants' disclosure as a blueprint to reconstruct the claimed invention from isolated pieces of the Klofta and Beerse patents contravenes the statutory mandate of section 103 of judging obviousness at the point in time when the invention was made.

The Examiner believes the Klofta patent discloses a lotion that is to mitigate the potential for skin irritation where the lotion includes a hydrophilic solvent, a high molecular weight polyethylene glycol, a fatty alcohol and a fatty acid. However, the Examiner does not indicate why one of ordinary skill in the art would apply the lotions of the Klofta patent to an absorbent article such as a diaper. Further, the Examiner picks and chooses from the hundreds of ingredients disclosed in the Klofta patent to arrive at the combination of hydrophilic solvent, high molecular weight polyethylene glycol, fatty alcohol and fatty acid claimed as part of the present invention. For example, the Klofta patent discloses that one of the key active ingredients of the lotion composition is one or more antimicrobials. (See Col. 11, lines 17-18). The claimed compositions of the present invention do not include antimicrobials as a key active ingredient. The Klofta patent also discloses the incorporation of hydrophilic solvents to aid in the solubilization of the antiviral organic acids; the Examiner selected polyethylene glycols from numerous other solvents (Col. 17, lines 13-30) and high melting components (Col. 10, lines 6-18) identified. Similarly, fatty alcohol and fatty acid are selected from numerous "skin conditioning agents" disclosed in the Klofta patent. Disclosure in the Krzysik and Klofta patents of compositions that can be applied to the skin- by itself- is an insufficient basis for the requisite motivation necessary to arrive at the claimed

Serial No.: 09/746,872

invention. Without identification of additional bases of motivation to combine the disclosures of the Krzysik and Klofta patents, the Examiner is impermissibly using the Applicants' disclosure as a blueprint to reconstruct the claimed invention.

Additionally, even in the Final Office Action mailed September 12, 2002, the Examiner fails to identify the motivation one of ordinary skill in the art would have had for combining the disclosure of the Beerse patent with both the disclosure of the Klofta patent and of the Krzysik patent. The Beerse patent discloses antimicrobial compositions that provide enhanced immediate as well as residual anti-viral and antibacterial efficacy. From the hundreds, perhaps thousands, of ingredients disclosed in the Beerse patent, the Examiner selected polysaccharides and polyacrylamide polymers that are identified as "thickening agents" in the Beerse patent. The Examiner has not identified why one of ordinary skill in the art would have selected polysaccharides/polyacrylamide polymers from the Beerse patent and combined them with various ingredients picked out from the Klofta patent to arrive at a composition including: from about 10 to about 90 weight percent of a hydrophilic solvent; from about 10 to about 90 percent by weight of a high molecular weight polyethylene glycol; from about 0 to about 40 percent by weight of a C₁₄ to C₃₀ fatty alcohol; from about 0 to about 40 percent by weight of a C₁₄ to C₃₀ fatty acid; and from about 0.1 to about 20 percent by weight of decoupling polymer. Just because all of the components of the claimed composition were capable of being combined does not mean one of ordinary skill in the art would have been motivated to arrive at the composition claimed by the present invention.

Any argument that one of ordinary skill in the art would have been motivated to combine the disclosure of the Beerse patent with the Krzysik and Klofta patents is further undermined by the Beerse patent disclosing use of the described compositions in chewing gum, cough drops, mouthwash, hard surface cleaners, laundry detergents, floor waxes, etc. (See Col. 9, lines 4-27). Therefore, one of ordinary skill in the art would have had to pick out specific thickening agents and a specific product form from the wide variety disclosed in the Beerse patent. The Examiner fails to identify both the motivation for making such selections and the motivation for combining such selections with the disclosures of the Krzysik and Klofta patents. For these reasons and the reasons set forth in the Amendment submitted on July 2, 2002, the Applicants submit that claims 1-7, 10-34, 37-41, 43, 45-47 and 49-57 are patentable over the Krzysik patent in view of the Klofta and Beerse patents.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 1-7, 10-34, 37-41, 43, 45-47 and 49-57. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-2433.

Serial No.: 09/746,872

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account. A duplicate of this sheet is provided.

Respectfully submitted,

DAVID J. TYRRELL ET AL.

By: Alyssa A. Dudkowski
Alyssa A. Dudkowski
Registration No.: 40,596

CERTIFICATE OF FACSIMILE

I, Cynthia M. Trudell, hereby certify that on November 12, 2002, this Amendment B is being sent via facsimile to the United States Patent & Trademark Office to RightFax Number 703-872-9303.

By: Cynthia M. Trudell
Cynthia M. Trudell